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HELIOS, INC.
3150 STATE STREET
BLACKSBURG, VA 24060

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SEP 18 2002

In re Application of : OFFICE OF PETITIONS
Dan A. Steinberg, Jasean Rasnake and :
David Sherrer : DECISION REFUSING STATUS
Application No. 10/076,858 : UNDER 37 CFR 1.47(a)
Filed: February 14, 2002 :
For: MICROMACHINED STRUCTURES
MADE BY COMBINED WET AND DRY
ETCHING

This is in response to the "Petition Under 37 CFR 1.47(a)," filed August 13, 2002.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on February 14, 2002 without an executed oath or declaration and naming Dan A. Steinberg, Jasean Rasnake and David Sherrer as joint inventors.

Accordingly, on March 13, 2002, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and filing fee, and the surcharge for their late filing.

In response, on August 13, 2002, the instant petition; a statement by joint-inventor David Sherrer which states joint-inventor Dan Steinberg refuses to

sign the declaration; a Declaration executed by all the inventors except Dan Steinberg; the \$130.00 petition fee, the filing fee; surcharge and a three (3) month extension of time were filed.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

Applicant lacks items (1), as set forth above.

As to item (1), Applicant has not demonstrated that Mr. Steinberg was presented with the application papers (specification, claims and drawings). Unless Mr. Steinberg was presented with a copy of the application papers (specification, claims and drawings), Mr. Steinberg could not attest that he has "reviewed and understands the application papers" and therefore could not sign any declaration which he was given. See Manual of Patent Examining Procedure, Section 409.03(d). Petitioner should show that a copy of the application papers was presented to the inventor, but that he did not respond to, or that he expressly refused, the request that he sign the oath/declaration in order to show that the inventor has refused to join in the application.

Please note, the "Power Of Attorney Or Authorization of Agent" submitted August 13, 2002, has not been accepted because it must be signed by all of the inventors or the assignee of record of the entire interest. See MPEP 402.10. As such, the petitioner herein is not empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the



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address of record until such time as appropriate instructions are received to the contrary.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

CC.

MARIA ELISEEVA
BROWN RUDNICK BERLACK ISRAELS, LLP
ONE FINANCIAL CENTER
BOSTON, MA 02111